

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MICHAEL RODIO,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

RECEIPT # 52896
 AMOUNT \$ 150.00
 SUMMONS ISSUED 12/1/04
 LEGAL RULE 4.1
 SWAVER FORM
 MOF ISSUED 12/1/04
 BY Docket MASSACHUSETTS
 DATE 12/1/04

TONY ANASTAS
 CLERK, US DISTRICT COURT
 BOSTON, MASSACHUSETTS

U.S. DISTRICT COURT
 DISTRICT OF MASS.

Civil Action No.

04-10026-WC

MAGISTRATE JUDGE Dein

NOTICE OF REMOVAL

R. J. Reynolds Tobacco Company (“RJR”), defendant named in the above-styled action, hereby files its Notice of Removal which shall effect a removal of this action to the United States District Court for the District of Massachusetts:

1. On or about November 19, 2003, a civil action was filed in the Superior Court of Massachusetts, County of Worcester, entitled Michael Rodio v. R. J. Reynolds Tobacco Company, Civil Docket No. 03-2337-A. On or about December 17, 2003, counsel for RJR accepted service of process and a copy of the complaint in the aforementioned action. Copies of the Summons, Complaint, Acceptance of Service and Civil Action cover sheet are being filed herewith as Exhibit A.

2. The above-captioned action is one within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332, in that complete diversity exists between Plaintiff and the Defendants.

3. Defendant RJR was, at the time this action was commenced, and still is a New Jersey Corporation, with its principal place of business in the State of North Carolina, and was not and is not a citizen of the Commonwealth of Massachusetts wherein this action was brought.

4. Plaintiff Michael Rodio was, at the time this action was commenced, and still is, a citizen and resident of the Commonwealth of Massachusetts (Complaint, ¶1), and was not and is not a citizen of the State of New Jersey or the State of North Carolina.

5. In a letter to defendant in August, 2003, plaintiff demanded in excess of \$75,000 to settle his claims. Accordingly, the amount in controversy in this action, exclusive of interest and costs, exceeds the sum or value of seventy-five thousand dollars (\$75,000).

6. This is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332 and is a civil action between citizens of different states wherein the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

7. This action is removable to this Court by defendant RJR pursuant to 28 U.S.C. §§ 1441(a) and 1446(b) because this Court has original jurisdiction over it, this Notice of Removal is filed within 30 days of service of the complaint upon RJR, and the Commonwealth Court in which this action is commenced is within this Court's district and division.

8. A Notice to State Court of Removal, along with a copy of this Notice, will be filed with the Superior Court of Worcester County, Massachusetts, and a copy of that Notice to State Court is attached to this Notice as Exhibit B. Said Notice to State Court and a copy of this Notice will also be served upon plaintiff.

9. Defendant will file with the Court attested copies of all records, proceedings and docket entries in the state court within thirty (30) days, pursuant to Local Rule 81.1.

WHEREFORE, RJR respectfully removes the aforesaid action to the United States District Court for the District of Massachusetts, in accordance with 28 U.S.C. § 1441, et seq.

Respectfully submitted,

R.J. REYNOLDS TOBACCO COMPANY

By its attorneys,

Sandra E. Kahn

Mark H. Burak, BBO# 558805
Sandra E. Kahn, BBO # 564510
Morse, Barnes-Brown & Pendleton, P.C.
Reservoir Place
1601 Trapelo Road
Waltham, MA 02451
(781) 622-5930
(781) 622-5933 (facsimile)

OF COUNSEL:

W.R. Loftis, Jr., N.C. State Bar No. 2774
Kristine M. Howard, N.C. State Bar No. 26903
Candice S. Wooten, N.C. State Bar No. 28161
Constangy, Brooks & Smith, LLC
100 North Cherry Street, Suite 300
Winston-Salem, NC 27101
(336) 721-1001
(336) 748-9112 (facsimile)

Dated: January 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served to all attorneys of record by first class mail this 5th day of January, 2004

Sandra E. Kahn
Sandra E. Kahn